

PP

a

v.

YEE THAM SOON

HIGH COURT MALAYA, TEMERLOH

b

VT SINGHAM JC

[CRIMINAL APPEAL NO: 42-10-1995]

15 SEPTEMBER 2000

CRIMINAL PROCEDURE: Sentence - Inadequacy of sentence - One-day imprisonment & RM5000 fine for voluntarily causing grievous hurt - Penal Code, s. 326 - Old age & health reasons - Whether justified - Whether lack of guilty plea taken into account

c

In the sessions court, the respondent was found guilty and convicted of voluntarily causing grievous hurt to one Chong Kiau, by means of fire under s. 326 of the Penal Code. He was sentenced to a one-day imprisonment and fined RM5,000 in default thereof to six months' imprisonment. The respondent paid the fine. This was an appeal by the deputy public prosecutor against the inadequacy of the sentence imposed by the sessions judge.

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The issues were: (i) whether old age and health reasons justified the sentence imposed; and (ii) whether lack of guilty plea should be taken into account.

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Held:

[1] Had the respondent pleaded guilty, that plea would have been a strong mitigating factor in his favour.

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[2] The conduct of the respondent in claiming trial to the charge and contesting the whole of the evidence of the prosecution, showed that he was not remorseful. In fact, there was no appeal by him against his conviction.

[3] Setting fire to a defenceless fellow human being, in this case, a woman, attracts severe punishment under the law. Old age and health reasons do not give a license to a person to commit the cruel act as that which was committed by the respondent.

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[4] A mere fine of RM5,000 and a one-day imprisonment was a mockery of the sentencing principles and against public interest. A wrong message might be conveyed to the public and would-be offenders, ie, that they could get away with a light sentence.

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- a* [5] The evidence successfully and positively adduced by the prosecution warranted a custodial sentence against the respondent irrespective of his old age.
- [6] The sessions judge in assessing the appropriate sentence failed to distinguish that a person found guilty after a lengthy trial should be given a heavier sentence when compared to a person who has pleaded guilty, subject of course, to facts and mitigating factors.
- b*

[Appeal allowed; sentence of imprisonment enhanced to 2 years; fine of RM5,000 sustained.]

- c* **Case(s) referred to:**
Ganesan Nachiappan & Ors v. PP [2000] 3 CLJ 302 (*dist*)
Gek Sing Kaliappan v. PP [1999] 4 CLJ 292 (*dist*)
Mohamed Abdullah Ang Swee Kang v. PP [1988] 1 MLJ 167 (*fol*)
PP v. Doraigunaraju Krishnan [1993] 3 CLJ 664 (*fol*)
- d* *PP v. Mohamed Nor & Ors* [1985] 2 MLJ 200 (*fol*)
PP v. Mustapha Abdullah [1997] 2 MLJ 424 (*fol*)
Raja Izzuddin Shah v. PP [1979] 1 MLJ 270 (*fol*)
Sau Soo Kim v. PP [1975] 2 MLJ 134 (*fol*)

- Legislation referred to:**
- e* Criminal Procedure Code, ss. 173A, 294
Penal Code, ss. 298A(1), 324, 326
Protection of Wild Life Act 1972, s. 68
- For the appellant - Iskandar Ali Dewa; DPP*
For the respondent - Awtar Singh Grewel; M/s Abu Talib Shahrom & Zahari
- f* *Reported by Usha Thiagarajah*

JUDGMENT

VT Singham JC:

g **Appeal Against Sentence By Public Prosecutor**

This is an appeal by the learned deputy public prosecutor against the inadequacy of sentence imposed by the learned Sessions Court Judge, Sessions Court, Temerloh on 25 September 1995 against the respondent.

- h* The charge against the respondent is as follows:

Charge

- i* Bahawa kamu bersama-sama pada 20.8.91 lebih kurang jam 6.30 pagi di Jalan Kebun, Km. 109, Jalan Raub/Bentong di dalam daerah Raub, Negeri Pahang Darul

Makmur dengan niat bersama telah dengan sengaja mendatangkan cedera parah kepada seorang perempuan cina bernama Chong Kiau KP 7861953 **dengan api**, oleh itu kamu telah melakukan suatu kesalahan dan boleh dihukum di bawah Seksyen 326 Kanun Keseksaan dan dibaca bersama Seksyen 34 Kanun Keseksaan.

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Close Of Prosecution Case

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The respondent was in fact charged together with his daughter Yee Kong Yoke at the Sessions Court. Both the respondent and his daughter claimed trial to the charge of voluntarily causing grievous hurt to Chong Kiau (P) **by means of fire** under s. 326 of the Penal Code. After hearing ten witnesses for the prosecution which went on for hearing for three days, the learned Sessions Court Judge at the close of the prosecution case acquitted and discharged the respondent's daughter, (2nd accused) without calling for her defence and ordered the respondent to enter his defence on the said charge on 21 February 1995.

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Close Of Defence Case

The respondent elected to give evidence on oath and on 28 August 1995, the case for the defence proceeded on for a day wherein the respondent contested the charge by raising the defence of alibi. **At the end of the defence case, the respondent was found guilty, convicted** and upon hearing mitigation plea by his counsel, he was sentenced to one day imprisonment and fined RM5,000 in default to six month's imprisonment on 25 September 1995. The respondent paid the fine. The public prosecutor being dissatisfied with the sentence filed an appeal against the sentence by a notice of appeal dated 28 September 1995. The respondent did not appeal against his conviction. Hence, this appeal by the deputy public prosecutor.

*e**f*

Appeal Before High Court

On 11 August 2000, when the appeal came up for hearing at the High Court, Temerloh, the respondent was absent. His counsel Muhamad Burok who represented the respondent informed this court that he received a telephone call in the morning from the respondent's son-in-law that the respondent was in Hospital, Raub and was unable to attend court. The respondent's counsel then applied for an adjournment and said that he will ask the respondent to produce a medical certificate. The learned deputy public prosecutor Iskandar Ali Dewa did not object to the said application for the postponement but applied for a warrant of arrest to be issued against the respondent and also applied to the court to order for the medical certificate to be produced by the afternoon on the same day on 11 August 2000, failing which, to issue the warrant of arrest against the respondent. The court postponed the case and

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- a* ordered the warrant of arrest to be issued against the respondent but only after 3.00p.m. on the same day if the medical certificate is not produced. The appeal was adjourned to 28 August 2000 for hearing.

- b* In the meantime, on 11 August 2000 at about 3.30p.m. this court was informed by the court interpreter that the respondent turned up in the afternoon at about 2.30p.m. and informed the court that he did not attend court in the morning because he was under the impression that his appeal was to be heard in the afternoon. As the respondent's counsel was not in court in the afternoon to address the court and as there was no medical certificate produced in the afternoon, the warrant of arrest was accordingly issued by the court against the respondent.

Warrant Of Arrest

- d* On 28 August 2000, when the appeal was called up for hearing, the respondent was present with his counsel Awtar Singh Grewel. The respondent was produced in court on the warrant of arrest. When the court asked the respondent's counsel to explain the absence of the respondent in court on 11 August 2000, Mr. Awtar Singh informed the court that the respondent did not attend court on 11 August 2000 in the morning because the respondent was in hospital and he was ill and that when the respondent came to court in the afternoon he was informed that the case was postponed to another date.
- e* The respondent's counsel said there was no medical certificate and apologised to the court. The court then read out the minutes of the court which was recorded on 11 August 2000 as informed by the previous counsel Muhamad Burok and which was different when compared to the explanation given by the present counsel Awtar Singh for the respondent's absence in court on 11 August 2000.
- f* Mr. Awtar Singh reiterated that his instructions were that the respondent did go to the hospital on 11 August 2000 but there was no medical certificate. The court then asked counsel if the respondent could produce any out-patient card from the hospital to confirm if the respondent had been to the hospital.
- g* The respondent's counsel replied that there was no card from the hospital and he again apologised to the court on behalf of the respondent.

- h* The deputy public prosecutor did not have anything to inform the court by reply. However, in order to proceed with the appeal proper without any delay and to avoid any prolonged proceedings on the warrant of arrest, this court gave a warning to the respondent for his absence and set aside the warrant of arrest and proceeded on with the appeal which was filed on behalf of the public prosecutor.

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Submissions By Deputy Public Prosecutor

In urging this court to reverse the sentence passed by the sessions court against the respondent, the learned deputy public prosecutor submitted as follows:

- 1) the appeal is in respect of an offence under s. 326 of the Penal Code which caused grievous injuries to PW6 **by means of fire**.
- 2) the respondent did not plead guilty to the charge but infact claimed trial and the respondent was found guilty and sentenced to 1 day imprisonment and fined RM5,000.
- 3) the respondent was convicted of an offence under s. 326 of the Penal Code which was punishable with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to whipping. In this case, as the respondent was above 50 years, he escaped the sentence of whipping.
- 4) the sentence of 1 day imprisonment and fine of RM5,000 is manifestly inadequate.
- 5) the respondent caused serious injuries to the victim **by means of fire**.
- 6) the victim PW6 suffered serious injuries and referred to p. 39 of the record of appeal wherein PW7 Dr. N. Prem Chandran has stated that “SP6 – dia ada burn – kebakaran di bahagian muka, tangan kanan dan badan depan dan belakang dan bahu kanan”.
- 7) he referred to p. 40C of the record of appeal wherein the doctor has stated that if no treatment was given, it could be serious and lead to infection “**tiada rawatan serius kerana dia boleh dapat ‘infection’** – dia dirawat mulai 21 August 1991 – keluar pada 19 September 1991”. “SP6 kata dia dibakar dengan kerosene”. “Sila periksa saya dibakar dengan api minyak tanah”.
- 8) he referred to p. 40F of the record of appeal wherein the doctor PW7 has stated that “saya periksa 4-5 kali selama dia tinggal di HKL dan lima (5) orang doktor telah periksa SP6”.
- 9) the facts show that the respondent had placed stones and planks with nails.
- 10) the respondent had used a dangerous weapon, namely, fire, on PW6 and also on PW4 and the injuries are serious and the offence is under s. 326 of the Penal Code.

- a* 11) the sentence which was passed against the respondent was after a full hearing and the respondent did not plead guilty and the sentence is not adequate.

The Respondent's Counsel Submitted As Follows:

- b* He referred to p. 105 of the record of appeal under the heading 'rayuan' (mitigation plea) and submitted that:
- c* 1) the respondent was 71 years old at the time of committing the offence. He is a rubber tapper. There is no criminal record. His wife depends on the respondent.
- 2) if the respondent is sent to long term of imprisonment it will prejudice him.
- 3) presently, he is 78 years old.
- d* 4) he is nearing towards end of his life. He is living on a day to day basis and this itself is a bonus.
- 5) he has heart ailment and requires treatment and is reaching towards end of his life.
- e* 6) he was admitted into the hospital on 12 July 2000.
- 7) produced a letter dated 12 July 2000 which is addressed to the Senior Assistant Registrar High Court, Temerloh by which the respondent's counsel sought an adjournment of the appeal which was fixed for hearing on 14 July 2000 and enclosing a copy of a medical report from
- f* Dr. Lee Keap King of the hospital, Raub on the respondent.
- 8) he has been instructed that the respondent's health is not good, always forgetful and cannot hear well.
- g* 9) he is living alone as his wife had passed away in an accident about three years ago.
- 10) sentence of 1 day imprisonment and a fine of RM5,000.00 is sufficient and is a good lesson for the future and not for long.
- h* 11) the sentence to fine of RM5,000 is manifestly high for a rubber tapper.
- 12) to show he is remorseful, he has agreed to pay a sum of ringgit one thousand (RM1,000) to the victim when the respondent was sued at the Magistrate's Court, Raub *vide* Summons No: 72-28-97 by the
- i*

victims PW4 and PW6 although the claim for special damages was for RM18,021 and produced a letter dated 5 September 2000 from the respondent's solicitors M/s. Thevin Chandran & Wong enclosing a cheque for RM1,000 in full and final settlement of the claim and a copy of the summons and statement of claim and a copy of the statement of defence.

a**b**

- 13) referred to p. 40 of the record of appeal wherein the evidence of the doctor PW7 reads "burn – superficial di muka dan tangan. Belakang dia partial thickness burn ada 3-4% di muka, 9% di tangan dan 10% di badan".

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- 14) referred to p. 40 of the record of appeal – we do not know whether the five doctors are specialists or housemen and is it a 'collective opinion'.

- 15) the nature of injuries is not serious and does not warrant a long term of imprisonment.

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- 16) referred to p. 108-109 of the record of appeal – grounds of judgment.

- 17) the Sessions Court Judge has taken into consideration the nature of the offence and the serious injuries and the facts of the case.

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- 18) referred to three reported cases, namely:

1. *PP v. Mohamed Nor & Ors* [1985] 2 MLJ 200

2. *Ganesan Nachiappan & Ors v. PP* [2000] 3 CLJ 302

3. *Gek Sing Kaliappan v. PP* [1999] 4 CLJ 292

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- 19) admits s. 326 is a serious offence but it does not mean everytime s. 326 Penal Code calls for a deterrent sentence but other factors must also be considered.

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- 20) sentence of 1 day imprisonment does not mean the court did not act within its jurisdiction.

- 21) the learned Sessions Court Judge has taken all factors into consideration.

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- 22) age of the respondent here is pertinent as severe sentence will take tremendous pain on him.

- 23) sentence passed by the Sessions Court is appropriate.

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a The Reply Of The Deputy Public Prosecutor

i. the doctor PW7 has stated that the injuries if not given treatment will be serious and can lead to infection. Referred to p. 40 of the record of appeal.

b ii. wish to refer to a case handed to me by the respondent's counsel but respondent's counsel did not refer it to the court and wish to seek permission to refer to the case.

Respondent's Counsel

c I object because the deputy public prosecutor has referred the case to the court without my permission as I handed to him only for the information of the deputy public prosecutor and not to refer to the court.

Court

d There is nothing wrong if the deputy public prosecutor wish to refer to the case to the court.

Deputy Public Prosecutor

e Referred to *PP v. Mustapha Abdullah* [1997] 2 MLJ 424. In this case, the respondent had pleaded guilty to a charge under s. 324 of the Penal Code and yet the High Court enhanced the sentence to four months imprisonment and set aside the fine of RM2,000.

Respondent's Counsel

f I wish to seek permission to submit on the case, *PP v. Mustapha Abdullah* which was referred to by the deputy public prosecutor.

Court

g Allowed.

Respondent's Counsel

Referred to *PP v. Mustapha Abdullah*.

h That case is in respect of s. 324 of the Penal Code. In that case, the victim was two months pregnant and the accused committed the offence whilst fasting during the month of Ramadhan and it was a road bully case.

Court

i This court drew the attention of the defence counsel that in *Mustapha's* case, the accused had pleaded guilty and the sentence of imprisonment to an offence

under s. 324 of the Penal Code is for only to a term which may extend to **three years' imprisonment** and requested counsel to read the last paragraph of the last page of the judgment in order to distinguish that case and the offence with the appeal before this court. Also that, the sentence provided for an offence under s. 326 of the Penal Code is for a term which may **extend to 20 years** and shall also be liable to fine or to whipping whereas the sentence to an offence under s. 324 of the Penal Code is only to a term which may extend to three years imprisonment.

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Respondent's Counsel

Reads the last paragraph of the last page of the judgment in *Mustapha's* case by His Lordship Dato' KC Vohrah J which is as follows:

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I would reserve the maximum of three years for a person in a very bad case **where violence with dangerous weapon is used if the person had claimed trial and was found guilty**". The accused in this case pleaded guilty and I have to take into account when revising the sentence. I have also to consider that he is 60 years old and that he was fasting during that day in the month of Ramadhan.

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Whether Appropriate For Appellate Court To Interfere With The Sentence Passed By The Lower Court

Generally, this court does not interfere at the appeal stage with the sentence passed by the lower court unless it is justified on the facts and there was misconception of the law. Nevertheless, on the facts in this case, this court is of the view that this appeal is an appropriate case to interfere with the sentence passed by the learned Sessions Court Judge. In this regard, this court would observe that it has been said time and time again by our superior courts and that it is an established principle that an appellate court should be slow to interfere or disturb a sentence passed by the court below unless it is manifestly wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances. Also, the mere fact that another court might pass a different sentence provides no reason for the appellate court to interfere if the court below applies the correct principles in the assessment of the sentence (*PP v. Mohamed Nor & Ors* [1985] 2 MLJ 200 SC).

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Facts Not Related To The Charge Is Not Considered By This Court

At the outset, this court also wish to make it clear that in assessing the appropriate sentence against the respondent this court did not take into consideration the placing of the stones and the plank with nails and the setting of the fire to PW4 as submitted by the learned deputy public prosecutor although those incidents are part of the evidence adduced during the prosecution case as that evidence is not directly related to the charge against the respondent. Why the prosecution did not choose to frame charges or include

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- a* those incidents against the respondent in respect of that piece of evidence is not the business of this court and do not wish to dwell on it. In fact when the learned deputy public prosecutor submitted on those evidence, this court immediately informed the deputy public prosecutor that they were not part or related to the charge and the deputy public prosecutor did not pursue on those matters as expected and in accordance with the highest tradition of the public prosecutor's office.
- b*

In deciding to enhance the sentence against the respondent, this court took into consideration the following matters:

- c* 1) the respondent **did not plead guilty** to the offence under s. 326 of the Penal Code but infact contested the whole of the evidence of the prosecution which of course was within his rights to do so if he was truly innocent and that the respondent was found guilty by the trial court upon hearing 10 witnesses for the prosecution and the defence of the respondent.
- d* 2) had the respondent pleaded guilty, that plea would no doubt would have been a strong mitigating factor in his favour (as it would have saved judicial time and expenses but he chose not to do so) (*Sau Soo Kim v. PP* [1975] 2 MLJ 134).
- e* 3) the nature of the offence committed by the respondent ought not to have been committed by the respondent to a defenceless fellow human being, that is, setting fire by the use of a mobile weed killer pump.
- f* 4) the conduct of the respondent in claiming trial to the charge and contesting the whole of the prosecution witnesses for the prosecution when eventually he was found guilty of the charge is a clear expression of the respondent not being remorseful. In fact, it is important to note at this stage that there is no appeal by the respondent against his conviction.
- g* 5) in order to have a clear picture of how the respondent committed the savage act, it is important to bear in mind and peruse some of the evidence adduced on behalf of the prosecution by the victim's husband PW4, the victim, PW6 herself, the medical officer PW7 and the person who went to the aid of the victim PW8 which is at pp. 8 to 41 of the record of appeal and which *inter alia* is as follows:

h **PW4 - Tan Peng Hun**
Examination In Chief

- i* Pada 20/9/91, saya pergi keluar daripada rumah jam 5.00 pagi, dengan sebuah kereta v/wagon. Saya keluar dengan isteri saya, nama Thong Kian (dipanggil/ dicamkan). Saya dan isteri nak pergi ke kebun kami di Batu 4, Jalan Bentong-Raub.

Kami sampai di simpang masuk ke kebun jam 6.00 pagi. Belum sempat sampai ke kebun kami, saya nampak paku atas jalan dan paku itu dipasangkan atas papan. **a**

Saya nampak papan ada paku atas jalan. Paku itu baru – nampaknya.

Selain daripada itu, depannya ada satu batu besar atas jalan – lepas batu itu ada 3 batang kayu iaitu tepi jalan itu. **b**

Saya pun berhenti kereta dan turun kereta, ambil papan itu dan serah papan kepada isteri saya.

Saya pun pergi tarik 3 batang itu. Isteri saya letak papan itu dalam kereta.

Saya sempat tarik 2 daripada 3 batang kayu itu. Saya tarik 2 batang itu, dan buang ke tebing sungai. Lepas itu saya nampak api menyala dekat isteri saya. Api itu adalah daripada satu pump yang digunakan untuk pump rumput-rumpai dan orang itu menyembur api itu kepada saya. Api itu kena rambut saya dan juga baju saya. **c**

Saya boleh cam orang itu. Orang itu ialah orang di dalam kandang iaitu Tertuduh 1 (dicamkan). **d**

Bila dia sembur api kepada saya, dia pergi ke depan kereta saya dan dia melintas depan lampu kereta saya.

Apabila saya dibakar dengan api, saya lari ke arah belakang kereta saya. **e**

Pada masa itu baju saya telah terbakar, saya cepat tanggalkan baju saya.

Apabila saya lari ikut jalan hala ke jalan besar dan di tengah jalan saya jumpa anak perempuan Tertuduh 1. Beliau ialah Tertuduh 2 (dicamkan).

Saya terus lari ke jalan besar, datang sebuah bas – saya naik bas, terus ke Balai Polis, Raub buat 1 lapuran polis. **f**

Isteri saya telah dibakar oleh Tertuduh 1. Isteri tak ikut sama ke Balai Polis. Di Balai Polis saya buat report (1 report dibacakan kepada saksi dengan terjemahan oleh Jurubahasa En. Yew). Ini Lapuran Polis saya – dikemukakan sebagai P4 iaitu Tranum Report No. 783/91. **g**

Lepas itu, saya telah pergi semula ke tempat kejadian itu dengan 2 anggota polis.

Di tempat kejadian itu, saya tak dapati lagi isteri saya di situ.

Kereta saya telah musnah terbakar dengan api. **h**

Kemudian saya diberitahu bahawa isteri saya berada di hospital.

Semasa lari ke hala jalan besar, kereta saya belum dibakar lagi.

Saya dapati kereta terbakar hanya apabila saya pergi semula ke tempat kejadian. **i**

S. Bagaimana dalam report P4, kamu kata kereta telah terbakar?

J. Pada pertama kali sampai, saya tak buat report lagi. Cuma beritahu kejadian kepada polis.

- a* Selepas pergi semula ke tempat kejadian itu dengan 2 anggota polis, lepas diberitahu isteri ada di hospital – saya pergi ke Hospital Daerah dulu, lepas itu baru pergi ke Balai Polis buat report – P4.
- Di tempat kejadian dengan 2 anggota polis, saya ada jumpa 1 papan berpaku dan 1 batang kayu dan seketul batu.
- b* Papan berpaku adalah lebih kurang 5 kaki daripada kayu dan batu itu. Papan itu ialah yang tunjukkan dikemukakan sebagai ID5 (dicamkan). Saya jumpa dengan 1 Kp1. ID5 bukan yang diserahkan kepada isteri saya. Papan berpaku serah kepada isteri itu telah terbakar.
- c* Inilah batang kayu yang saya jumpa itu – dikemukakan sebagai ID6 (dicamkan). ID6 ialah salah satu daripada 3 batang kayu yang saya jumpa di tempat kejadian pagi itu.
- 1 ketul batu besar itu ialah yang ditunjukkan ini (saksi turun daripada kandang saksi) ditandakan sebagai ID7 (3 ketul) (dicamkan). Saksi kata dulu 1 ketul besar, sekarang telah pecah 3.
- d* Pump itu ada 1 ‘noser’ dan ditepi ‘noser’ itu ada diikat dengan kain. Kain itu dinyalakan. Pasang api di kain itu. Bila dia sembur dengan minyak tanah, minyak tanah ikut noser dan minyak tanah itu terbakar.
- e* Semasa pergi semula ke tempat kejadian dengan 2 anggota polis, saya jumpa satu paip tembaga. Dekat noser/hujung ‘noser’ itu ada diikat dengan kain. Pagi itu saya nampak besi ini – yang ditunjukkan ini. Pagi itu saya nampak api minyak di hujung besi ini. Dikemukakan 1 besi hitam sebagai ID9 (dicam) dengan hujungnya ada kesan kain terbakar.
- f* Sebelum 20.8.91, saya kenal dengan Tertuduh 1 lebih 20 tahun. Dia bukan jiran, tapi kebun dia bersempadan dengan kebun saya.
- Hubungan saya dengan Tertuduh 1 – tak pernah bergaduh dan tak pernah bertengkar mulut juga.
- S. Kenapa dia serang kamu dengan api pagi itu?
- g* J. Sebelum tarikh kejadian, saya telah minta orang sukat batu sempadan kebun saya. Di kebun didapati Tertuduh 1 telah memasuki dan mengusahakan sebahagian tanah saya. Lepas itu saya telah ambil bahagian tanah yang diusahakan oleh Tertuduh 1. Mulai tarikh itu Tertuduh 1 sudah tak bercakap lagi dengan saya.
- h* **Cross-Examination**
- Pada 20.8.91 – saya keluar jam 5.00 pagi. Saya sampai ke tempat kejadian lebih kurang 6.00 pagi lebih. Saya tak pakai jam – tak boleh kata dengan tepat.
- i* Dalam perjalanan ke tempat kejadian – saya tak jumpa sesiapa pun.
- Di tempat kejadian itu, masih gelap lagi.

- S. Di tempat kejadian. Ada ladang getah? Betul? **a**
- J. Di tempat kejadian – ada jalan 40 kaki ke sebelah kiri ada kebun getah. Ke tempat kejadian, saya terpaksa lalui kebun Tertuduh 1.
- S. Kebun Tertuduh 1 adalah sebelah kiri jalan?
- J. Saya silap – untuk ke tempat kejadian, tak perlu lalui kebun Tertuduh 1 dan betul kebun Tertuduh 1 di sebelah kiri jalan. **b**
- S. Kalau kamu diserang di tempat batu dan kayu, tempat itu jauh daripada kereta?
- J. Jarak antara Tertuduh 1 dengan saya ialah lebih kurang 8 kaki sahaja. **c**
- S. Tempat kamu diserang - berapa jauh daripada kereta?
- J. Lebih kurang 5 kaki di hadapan kereta.
- S. Semasa turun kereta - injin ditutup? **d**
- J. Injin hidup, lampu menyala. Tak matikan.
- S. Semasa diserang, kamu tak kenal orang itu?
- J. Saya diserang di hadapan kereta, lampu menyala. Saya boleh nampak dia. Api itu – semasa diserang, di noser kecil – bila menyembur dia makin besar. – api boleh menyembur lebih kurang 10 kaki. **e**
- S. Api daripada semburan itu cukup terang?
- J. Ya, betul
- S. Api itu terlalu terang, api itu ‘temporary blinded’ kamu? **f**
- J. Dia tak silau, sebab saya pandang tepi. Bila diserang, saya patah balik, saya pandang tepi.
- S. Kamu ‘temporary blinded’ not by the fire, but other the light? **g**
- J. Tak betul. Saya pasti.
- S. Kamu tak boleh cam sebab, kamu pandang tepi sahaja?
- J. Saya boleh cam orang itu dengan jelas.
- Dia gunakan pump rumput-rumpai - iaitu yang ‘tank’ di belakang, se udang di depan. Ada tali, warnanya tak jelas. Talinya atas bahu ke bawah. Dipinggang tak ada tali.
- Batang pump & sebelah kiri - noser di sebelah kanan.
- S. Sebab orang ini ada bawa pump, kamu nampak sebelah sahaja, kamu tak boleh cam orang itu? **i**

- a** J. Tong pump ada di belakang. Saya nampak muka dia dengan jelas.
S. Pump ini, bila pump, baru racun keluar, tak pump, tak keluar racun?
J. Pump itu ada 1 sylinder. Sylinder itu satu tekanan angin. Tekanan angin boleh simpan, apabila kita picit noser di tangan kanan – air keluar, tak picit air tak keluar.
- b** S. Kalau tak pump, there is no flow of water? Betul?
J. Bila pump, cukup kuat, lepas itu baru picit noser, pancutan itu akan keluar sehingga tekanan itu habis.
- c** S. Adakah api itu terpancut-pancut atau pulus-pulus?
J. Api itu berterusan tak putus-putus.
S. Hanya flame-thrower yang boleh mengeluarkan api berterusan, benar apa seperti kamu cakap itu - tidak?
- d** J. Tak setuju.
Di ‘noser’ itu ada kain yang diikat. Bila minyak tanah ditekan dengan picit, api akan keluar.
Balutan kain lebili kurang saiz – 1 inci lintang. Bila kain dibakar, kain menyala & ‘noser’.
- e** S. Jika ada api, ia boleh meletup pump, bahaya kepada orang yang tanggung.
J. Belakang noser ada paip besi – panjang lebih kurang 1 kaki setengah – ada noser getah di gantung ke tong itu.
- f** S. Adakah kamu lihat benda yang kamu terangkan tadi?
J. Malam itu saya nampak dawai itu dipasang seperti diterangkan tadi.
S. Kamu sebenarnya tak nampak kerana kamu sekejap sahaja dengan Tertuduh 1?
- g** J. Ada nampak, lampu terang.
S. Di mana kamu dapat ID8 ini?
J. ID8 dijumpai di tempat kejadian – di belakang kereta lebih kurang 100 kaki di belakang.
- h** S. ID8 ini tak digunakan oleh Tertuduh 1? Pada pagi itu?
J. Tertuduh 1 gunakan ID8 ini pada pagi itu.
S. Adakah kamu lihat isteri kamu dibuang?
- i** J. Tak lihat.

Jalan itu boleh digunakan oleh orang lain juga.

a

S. Kemungkinan ada orang lain telah gunakan juga jalan itu pada hari itu?

J. Ya, mungkin ada.

S. Saya tak nampak siapa yang bubuh kayu, batu dan papan di tempat kejadian itu?

b

J. Ya, betul tak nampak.

Tertuduh 1 bersembunyi di situ, pagi tadi saya sebut. Api yang saya nampak pertama kali di sebelah kiri kereta saya.

c

S. Jadi kalau ada orang bersembunyi di situ, kamu nampak orang itu – lampu kamu kata terang.

J. Tak nampak – lampu kereta suluh ke depan orang itu bersembunyi di tepi jalan.

d

S. Daripada jalan raya ke jalan tempat kejadian, ada satu selekoh?

J. Ya, betul. Ke kiri selekoh itu.

S. Jadi lampu itu akan suluh ke kiri ke tempat orang itu bersembunyi?

J. Selekoh itu lebih kurang 150 kaki daripada tempat kejadian. Tempat kejadian di tempat jalan lurus. Tempat kejadian selepas selekoh.

e

S. Saya katakan – kalau ada pun orang bersembunyi, kamu akan nampak?

J. Tak boleh nampak.

S. Apabila orang itu melintas di hadapan kereta dekat dengan kamu, kenapa tak tangkap dia.

f

J. Api itu kuat sangat dan saya tak boleh buat begitu. Lepas itu pergi ke jalan besar. Sebelum itu nampak Tertuduh 2.

S. Kamu nampak dia macam mana?

g

J. Bila dia lari keluar ke jalan besar, dia gunakan lighter untuk suluh jalan – saya jumpa Tertuduh 2 di sebelah kanan dia.

Saya pun tak tangkap dia – tak pegang dia kerana saya takut, mungkin dia bersenjata.

h

Re-Examination

Selepas diserang - saya lari ke jalan besar.

i

a PW6 - Chong Kian (P)
Examination In Chief

b Pada 20.8.91, saya telah keluar rumah dengan suami lebih kurang jam 5.00 pagi. Suami pergi ke kebun di Bt. 4, Jalan Benting-Raub – naiki kereta V/wagon. Tak ingat nombor pendaftarannya. Dalam perjalanan ke kebun, apabila kami masuki jalan kecil daripada jalan besar menghala ke kereta kami di satu tempat tak jauh daripada simpang itu terdapat papan dengan paku atas jalan itu.

Saya sendiri nampak papan itu. Suami saya pun berhenti kereta, dia turun daripada kereta, pergi ambil papan berpaku itu dan serah kepada saya. Saya pun simpan papan itu dalam kereta.

c Lepas itu suami, tak jauh daripada tempat terjumpanya papan berpaku itu – terdapat seketul batu besar dan 3 batang kayu melintang jalan itu. Suami pergi ambil 2 kayu dan buang 2 kayu itu ketebing sungai – disebelah kanan jalan. Batu itu besar – satu pemeluk saksi. Lagi satu kayu itu kira-kira 1/3 kaki (4”) di garisan pusat.

d Masa itu saya berdiri di tepi kiri kereta kami, saya nampak Tertuduh 1 (dicamkan) datang daripada tebing bukit tepi kiri saya dan dia pergi ke arah suami saya. Saya pun suluh ke muka Tertuduh 1 dengan lampu picit yang ada di tangan saya.

e Jarak tertuduh 1 dengan saya ketika itu ialah lebih kurang 5 kaki. Saya nampak jelas muka Tertuduh 1 dengan jelas.

Ketika itu dia (Tertuduh 1) ada satu pump rumput-rumpai atas belakang dan tangan kiri menekan pump itu. Tangan kanan Tertuduh 1 pasang api itu. Maksud saya pegang api ialah 1 paip besar dengan 1 besi dan ‘noser’.

f Ketika itu api sudah dipasang – di noser itu. Tertuduh 1 pergi ke arah suami saya yang ketika itu berada di hadapan kereta kami dan terus serang suami saya. Tertuduh 1 pergi dekat dia.

Apabila suami saya diserang oleh Tertuduh 1 dengan api, dia terus larikan diri ke bahagian kereta kami dan Tertuduh 1 terus kejar suami saya dengan api itu.

g Suami saya sempat larikan diri ke arah jalan besar. Lepas itu Tertuduh 1 patah balik ikut depan kereta kami dan menyerang saya dengan api itu.

Saya pertahankan diri dengan angkat tangan kanan (saksi demonstrates di Mahkamah) untukindungi muka daripada api itu.

h Saya rasa panas dan sakit dan tak boleh tahan lagi. Saya pun terus elak serangan api itu dengan melarikan diri ke belakang kereta, tapi Tertuduh 1 masih teruskan serangannya dengan api itu.

i Saya tak boleh tahan lagi, saya terus lompat ke dalam semak di tebing sungai itu. Tempat itu banyak semak dan pergi ke arah sungai. Saya akhirnya terjun ke dalam sungai itu.

Tangan kanan, bahu kanan, telinga kanan, pipi kanan, tengkuk, bibir, muka dan rambut semua dijilat api. *a*

Kesan-kesan api ditunjukkan oleh saksi kepada Mahkamah. Telinga kanan telah tercacat.

Semasa lari ke arah sungai itu, bawah saya telah terbakar. *b*

Bila saya terjatuh ke dalam sungai, api itu kena air jadi padam. Sungai itu tak dalam air, hanya paras lutut.

Ketika itu masih gelap lagi. Saya rasa keadaan sekeliling dengan tangan sahaja – bila ada tebing yang tak berapa tinggi, saya naik ke atas tebing sungai itu di seberang sungai. *c*

Saya rasa sakit dan tak larat berjalan lagi. Saya pun duduk di bawah pokok – bersandar ke sebatang pokok

Semasa bersandar itu, saya nampak kereta kami terbakar. *d*

Saya pun berjalan dalam semak. Lepas itu, akhirnya terjumpa sebuah rumah.

Akhirnya saya terus menjerit minta tolong.

Lepas menjerit minta tolong, penghuni lelaki Cina keluar dengan lampu picit dan tanya saya ‘apa pasal’. *e*

Saya beritahu dia, Tertuduh 1 telah serang saya dengan api.

Lepas itu saya minta 1 baju untuk menutup badan saya dan dia pun beri 1 baju kepunyaan isteri dia dan dia bantu saya berjalan ke tepi jalan raya. Lelaki Cina itu telah cuba tahan beberapa kereta yang lalui jalan raya itu, tapi kereta tak berhenti. Sebab saya rasa sakit sangat, dia pun ambil motorsikal dan hantar saya ke Hospital Daerah Raub. *f*

S. Kamu kenal dia lelaki Cina itu?

J. Ya, kenal – nama tak tahu, Dia masih berada di tempat itu.

Selepas di Hospital Daerah Raub, selepas doktor beri rawatan kecederaan saya, saya telah dihantar ke Hospital Besar Kuala Lumpur dengan ambulan. *g*

Di Hospital Besar Kuala Lumpur, pada 21/8/91, jam 3.30 petang, saya buat laporan kepada seorang pegawai polis. (1 laporan polis dibacakan dengan terjemahan oleh Jurubahasa Cina En. Yew kepada saksi). *h*

(Saksi kata ada perbezaan. Orang itu yang serang itu bukan di T.Emas Sempalit lapi di Bkt. Keman). Yang lain-lain, betul.

Para akhir, “telah sembur api 2 kali” tak betul – yang sebenarnya terus menerus serang saya. *i*

Semasa buat report, saya tak boleh cam orang yang terima report. Saya ada mata tapi tak boleh buka mata kerana kecederaan.

- a** Saya tak boleh ingat lagi semasa P. 13 itu telah dibacakan semula atau tidak kepada saya.
- Saya berada di H.B.K.L. selama 28 hari. Lepas itu pohon pindah ke Hospital Daerah Raub. Di Hospital Daerah Raub selama 19 hari lagi.
- b** S. Apa jadi lampu picit yang kamu gunakan?
- J. Semasa diserang oleh Tertuduh 1, saya telah tercampak lampu picit itu.
- S. Kamu boleh cam batu sepemeluk di tempat kejadian.
- J. (3 batu ditunjukkan kepada saksi - ID7). Inilah batu itu – ID7 (dicamkan).
- c** S. Kamu boleh cam satu daripada kayu yang 3 tiga itu?
- J. Ya, inilah satu kayu IID6 itu (dicamkan).
- S. Ketika kamu diserang Tertuduh 1, adakah dia kata apa-apa kepada kamu?
- d** J. Tertuduh 1 semasa kejar saya ke tebing sungai, dia kata - “tengok awak berani larikah”. Tertuduh 1 kata 3 kali perkataan itu. Punca kejadian ini adalah batu sempadan kebun Tertuduh 1 dan kebun saya. Tertuduh 1 telah usahakan sebahagian tanah saya yang bersempadan degnan kebun Tertuduh 1. Lepas itu kami – saya dan tertuduh 1 - pergi sukat tempat itu. Hasil sukatan – Tertuduh I telah usahakan sebahagian tanah saya.
- e** Selepas itu tanah yang berkaitan telah diambil alih oleh saya. Lepas itu Tertuduh 1 tak puashati dengan saya dan suami saya atas perkara itu.

Cross-Examination

- f** S. Kamu pergi ke tempat batu dan kayu itu?
- J. Tak, hanya suami yang pergi.
- S. Oleh sebab itu kamu tak boleh cam papan dan batu serta kayu itu?
- J. Tapi saya boleh cam.
- g** Saya lihat 1 batu besar.
- S. Bila disoal - batu dan kayu itu bukan yang ada di tempat kejadian?
- J. Saya tak setuju.
- h** S. Kamu nampak api kali pertama di mana?
- J. Api itu mula-mula muncul daripada tepi tebing bukit sebelah kiri saya.
- S. Berapa jauh daripada kamu berdiri?
- i** J. 10 kaki daripada saya.

Api itu berjalan sampai sejauh 5 kaki daripada saya dan masa itu saya suluh dia dengan lampu picit. **a**

Api itu mula sebesar bola tenis, apabila mula nampak Bila sampai di tempat 5 kaki daripada saya – api mulai membesar sedikit.

S. Adakah api itu bulat atau panjang? **b**

J. Api sudah memanjang.

S. Sebab dia membesar, dia jadi terang?

J. Ya, setuju.

S. Bila dia membesar, kamu temporarily blinded? **c**

J. Tak begitu. Api besar tapi saya tak silau.

S. Saya katakan kamu tak nampak Tertuduh 1.

J. Dia telah suluh muka orang itu sebelum dia menyerang suami saya. Semasa keluar kereta, saya telah bawa bersama lampu picit itu. **d**

Ketika Tertuduh 1 di tempat 5 kaki daripada saya, suami saya sedang menarik kayu yang melintangi jalan di hadapan kereta.

S. Adakah ketika itu, kamu buat amaran kepada suami? **e**

J. Tidak.

S. Adakah kamu lihat orang itu serang suami kamu?

J. Ya, saya lihat sendiri. **f**

Bila kena serang, suami terus larikan diri ikut sebelah kanan dan larikan diri ke arah belakang kereta dan terus ke jalan besar.

S. Ada dengar bunyi apa-apa?

J. Tak dengar apa-apa ketika itu. **g**

Orang itu kejar suami saya ke tepi kereta kami – tepi bahagian belakang kereta. Kemudian dia patah balik.

S. Adakah kamu cuba lari ketika itu?

J. Saya fikir Tertuduh 1 hanya menyerang suami sahaja tapi bila dia mula serang saya, saya tak tahu apa nak buat. **h**

Saya nampak Tertuduh 1 bawa pump di belakangnya.

S. Pump itu besar dan lindungi sebahagian besar orang itu?

J. Pump itu setakat bahu belakang orang itu, muka dan badannya tak terlindung. **i**

- a* Api itu tidak putus-putus – berterusan. Dia panjang – daripada kandang saksi hingga ke buku merah – iaitu kira-kira 10 kaki.
- S. Kalau panjang begitu, tak perlu datang kepada kamu. Orang itu boleh halakan sahaja api itu kepada kamu?
- b* J. Saya ada di sebelah kiri kereta itu dan kereta itu terlindung saya, orang itu terpaksa patah balik ikut depan kereta dan serang saya.

PW7 – Dr N Prem Chandran
Examination In Chief

- c* Saya lulus MBBS, & MS, Otopedik Kuantan. Saya telah bekerja jadi doktor 10 tahun. Pernah 1 kali beri keterangan di mahkamah pada 20.8.91, saya bertugas di HKL dengan UKM.
- Pada 21/8/91, saya telah dirujukkan seorang perempuan nama Chong Kian. Dia datang pada 2.00 petang 21/8/91. Chong Kian ialah SP6 (dicamkan).
- d* SP6 – dia ada burn – kebakaran di bahagian muka, tangan kanan dan badan depan dan belakang dan bahu kanan.
- Tiada rawatan – serius kerana dia boleh dapat ‘infection’. Dia dirawat mulai 21/8/91 – keluar pada 19/9/91.
- e* S. Apa sebab kecederaan ini?
- J. SP6 kata dia dibakar dengan kerosene.
- Sila periksa/saya dibakar dengan api minyak tanah.

PW8 Ding Swee Ming
Examination In Chief

- f* Pada 20/8/91 jam 6.30 pagi saya berada di rumah sedang tidur.
- Pada 6.30 pagi, saya terdengar ada orang panggil. Orang itu panggil – dalam bahasa Hakka ‘Tokay’ – suara perempuan. Bila saya dengar orang panggil – saya pun bangun dari tidur dan ambik lampu suluh untuk cek siapa yang panggil.
- g* Saya keluar rumah – dapati SP6 yang panggil. SP6 kata dia dibakar oleh Mai Kai Chai dalam bahasa Hakka.
- S. Kamu tahu siapa Mai Kai Chai?
- h* J. Ya, saya tahu orang itu. Orang itu ialah dalam mahkamah iaitu Tertuduh 1 (dicamkan).
- SP6 pada masa itu – SP6 telah terbakar – bahagian telinga dan bahu terbakar, tapi tak ingat sebelah mana.
- i*

Lepas itu saya tolong dia. Ada lagi bahagian baju yang masih lekat pada badan – saya tolong dia guntingkan bahagian baju itu – buang dan berikan dia 1 baju untuk dia pakai.

a

Kain baju yang terbakar itu – berlubang-lubang. Dia berkeadaan basah. Saya tak tanya kenapa ia basah.

b

Selepas dia pakai baju, saya bawa SP6 ke tepi jalan untuk tahan kenderaan yang lalu untuk pergi ke Hospital.

Tiada kenderaan yang berhenti. Bila tiada yang berhenti, saya bawa SP6 dengan motorsikal saya ke Hospital.

6) the respondent initially set fire to PW4 and he managed to free himself and ran away but leaving his wife, the victim PW6. The respondent did not stop his cruel act when PW4 ran away and was still not satisfied but instead proceeded on by setting fire to PW6, an innocent bystander who did not cause any provocation to the respondent.

c

7) setting fire to a defenceless fellow human being in this case, a woman, attracts severe punishment as provided under the law, and cannot be tolerated by this court irrespective of the offender's age otherwise a mere fine of RM5,000 and 1 day imprisonment will make a mockery of the sentencing principles and will be wholly against public interest and might also convey the wrong message to the public as a whole and would-be offenders that they could get away with a light sentence, such as a fine.

d

8) no person has the right to set fire to a fellow human being, and the only time to the knowledge of this court a person is set on fire is when he is already dead and because of a particular customary obligations/rites and for the sole purpose of cremation and not otherwise.

f

9) the act committed by the respondent despite his old age is inhuman and a cowardly act on a helpless woman who only she will know what kind of suffering, agony and ordeal she went through during the fire on her and until PW8 came to her aid and this kind of offence cannot be condoned by the court and in our society and has to be rejected outright.

g

10) if old age as that of the respondent is not a barrier to commit the serious and cruel act against a defenceless woman who had also to witness her husband PW4 being set on fire then certainly old age cannot be used as a barrier or as a foremost mitigating factor to escape a longer term of custodial sentence but he must be prepared to suffer the penalties as prescribed by law.

h

11) if old age alone and health reasons of an accused person who is found guilty of a serious offence, like setting fire to a fellow human being, is allowed to apply as a ground to plead for not imposing a corrective

i

- a* custodial sentence and as a criteria in the assessment of sentence, then it is a dangerous precedent and may not be impossible to envisage the horrifying experience the society may have to go through on the hands of old aged would-be offenders.
- b* 12) infact, old age and not being in good health does not give a licence to a person to commit the cruel act as that which was committed by the respondent and later plead for mercy using old age and health reasons as a strong mitigating factor for a lenient sentence and to escape a custodial sentence.
- c* 13) the evidence successfully and positively adduced on behalf of the prosecution which sought the conviction of the respondent, in the view of this court, out-weighs for a non-custodial sentence against the respondent even after taking into serious consideration all the mitigating factors including the old age of the respondent vigorously put forward by the defence counsel for the respondent.
- d* 14) everybody in this country is entitled to walk through the streets in peace and free from fear and anyone who infringes the rights of others and disturb that freedom should be severely dealt with by the courts when time is fixed for sentencing.
- e* 15) the reasoning of the learned Sessions Court Judge that the respondent is 71 years old and should not be separated from his wife and from spending the rest of his life with his wife who is also old and that the victim PW6 did not suffer disfigurement cannot under any stretch of imagination be accepted as a reasonable ground to impose a fine of RM5,000 and 1 day imprisonment when compared to the gravity of the offence and the manner the respondent went about committing the offence during the early hours in the morning and that mitigating factors put forward by the respondent's counsel ought not be given too much weight to completely disregard the facts presented by the prosecution in this case but must equally be balanced and this is what this court has infact done (see *Raja Izzuddin Shah v. PP* [1979] 1 MLJ 270 and *PP v. Doraigunaraju Krishnan* [1993] 3 CLJ 664).
- f*
- g*
- h* 16) in allowing personal consideration of the respondent, the learned Sessions Court Judge seemed to have disregarded the paramount consideration of public interest as a whole. The learned Sessions Court Judge in assessing the appropriate sentence had failed to distinguish two different circumstances, when **it** is time for assessing the appropriate sentence, namely, cases when an accused **pleads guilty** to an offence and cases
- i* when an accused is **found guilty after a lengthy trial** and at the end of the defence case. It is the view of this court that a person who is

found guilty after a lengthy trial should be given a heavier sentence subject to the facts and the mitigating factors when compared to a person who has pleaded guilty which of course will be subject to the facts and the mitigating factors (See *Mohamed Abdullah Ang Swee Kang v. PP* [1988] 1 MLJ 167).

- 17) the reason put forward by the respondent's counsel that the respondent's wife is depended on him is no longer in existence as according to the respondent's counsel she had passed away about three years ago. Infact it will be much better for the respondent to be looked after by the prison authorities as he is alone and since all the medical facilities and assistance is available from the prison authorities instead of allowing him to be alone all by himself.

The cases referred to by the respondent's counsel could be easily distinguished and has no application to the respondent's case.

- a) In *PP v. Mohamed Nor & Ors*, the respondent was charged for a different nature of an offence being an offence under s. 298A(1) of the Penal Code and the maximum custodial punishment at the time was only for a term which may extend to three years, or with fine, or with both. Infact, the punishment for an offence under s. 298A of the Penal Code has been amended by Act A614 with effect from 31 May 1985 and the sentence to imprisonment has been increased to a term of not less then two years and not more than five years and has specifically excluded the application of s. 173A and 294 of the Criminal Procedure Code.
- b) In *Ganesan Nachiappan & Ors v. PP* [2000] 3 CLJ 302 CA the appellants were sentenced after they had **pleaded guilty** to the amended charge under s. 304 (1st limb) read with s. 34 of the Penal Code and after hearing the mitigation put forward by their respective counsels, the appellants were sentenced to 14 years imprisonment. In rejecting the cross-appeal by the Public Prosecutor, His Lordship Haidar Mohd Noor JCA in delivering the judgment of the Court of Appeal said that the learned judge had properly exercised his discretion and he had taken into account the interest of the appellants and balanced them with the public interest.
- c) In *Gek Sing Kaliappan v. PP* [1999] 4 CLJ 292 the offence involved contains no violence and is basically a statutory offence wherein the appellant had pleaded guilty to illegal possession of snakes under s. 68 of the Protection of Wild Life Act 1972 which is not related to the nature of the offence committed by the respondent in the appeal before this court. In *PP v. Mustapha Abdullah* [1997] 2 MLJ 424, despite the fact that the respondent had pleaded guilty and was 60 years old His Lordship Dato' KC Vohrah J enhanced the sentence to four months imprisonment instead

- a* of a fine. The offence in that case was under s. 324 of the Penal Code wherein the maximum custodial imprisonment is for a term which may extend to three years, or fine, or with whipping or with any two of such punishments. Also, in that case, the respondent had pleaded guilty which tends to show that the appellant in that case was remorseful wherein in
- b* the respondent's case before this court, he did not plead guilty and committed a more serious offence, by means of fire. In that case, His Lordship Dato' KC Vohrah J has clearly stated that:

- c* I would reserve the maximum of three years for a person in a very bad case **where violence with dangerous weapon is used if the person had claimed trial and was found guilty**. The accused in this case pleaded guilty and I have to take into account when revising the sentence. I have also to consider that he is 60 years old and that he was fasting during that day in the month of Ramadhan.

- d* In the appeal before this court, the learned Sessions Court Judge having found that causing serious injuries to a person is a serious offence and more so with the use of fire, failed to reflect those findings in the sentence imposed by him. Infact the learned Sessions Court Judge seemed to have excessively leaned towards the respondent and had failed to direct his mind that the paramount consideration in assessing the appropriate sentence is public interest. It is not
- e* the view of this court that the learned Sessions Court Judge ought to wholly reflect public opinion but he must at least not be indifferent or disregard it, and must at least make expressly clear that in the light of the appalling increase in crimes involving violence the courts should not tolerate such offenders and instead protect the victims and the society as a whole and who should not be
- f* made to live in fear so as to prevent them from going through the streets for fear of being attacked for no reason whatsoever.

Distinction Between Pleading Guilty Before Trial And Being Found Guilty After Trial

- g* Consequently, the reasoning given by the Sessions Court Judge to sentence the respondent to one day imprisonment and to a fine of RM5,000 cannot be accepted as correct in law and on the facts as he did not consider the element of public interest. Had the learned Sessions Court Judge carried out a balancing exercise between the public interest and the respondent on its totality, i.e. the
- h* deterrent sentence that was required in offences of voluntarily causing grievous hurt by means of fire and that the respondent did not plead guilty but had claimed trial and the mitigating factors put forward on his behalf, he would have perhaps imposed a custodial sentence or a longer custodial sentence and not just to 1 day imprisonment. If this is the kind of sentence that the lower courts decide to impose against a person who is found guilty **after he has**
- i* **claimed trial** to a serious offence involving violence, then what is there to

prevent accused persons from trying his or her luck by claiming trial even if they are guilty of the offence and thereafter plead for a lenient sentence using old age and health reasons after they are found guilty and after going through a trial or lengthy trial and after having taken so much of the judicial time. Infact, as this court has stated above, a distinction has to be drawn between an accused person who pleads guilty before the start of the trial and an accused person who is found guilty after a full trial when the time comes to pass the sentence.

Plea Of Being Remorseful

As for the payment of RM1,000 by the respondent to both the victims, *ie*, PW4 and PW6, defence counsel's plea that the respondent has shown remorse cannot be accepted as it is not sincere because the respondent had only made the payment after he was sued by both the victims, the husband and wife (PW4 and PW6) in 1997, and after the respondent had filed his statement of defence dated 23 May 1997 denying the entire claim of the plaintiffs-victims and not immediately or soon after he had committed the offence on 20 August 1991. Also, as admitted by the defence counsel, the claim of the victims were for RM18,021 as special damages and bearing in mind the nature of the injuries suffered by the victim PW6, the length of stay in the hospital being a total of 47 days in 2 hospitals, it cannot be said that a mere payment of RM1,000 by the respondent after about six years and after he had contested the claim of both the victims shows or tend to show he is remorseful or anywhere near to that. It is the view of this court that true feelings of being remorseful to be accepted by this court towards victims of violence which an accused person has committed must come immediately or as soon as possible and not when an accused person realises that he has no other avenue or after he has exhausted all his avenues to manoeuvre to free or exculpate himself from the offence he has committed and after he is found guilty at the end of a full trial.

In this case, despite the fact that the respondent was found guilty after a full trial, he still went on to contest the civil claim by filing the statement of defence, which clearly shows that he was not remorseful and the conduct of the respondent after the offence was committed is also an important factor to be taken into account at the time of imposing the appropriate sentence. If the respondent was truly remorseful, he ought to have at least when he was found guilty of the criminal offence should have voluntarily paid compensation to the victim PW6 and/or to PW4 and not after he was served with a summons and after he has taken steps to contest the civil claim. In the circumstances, this court cannot accept his plea that he is remorseful and sincere.

*a**b**c**d**e**f**g**h**i*

a **Whipping**

The respondent should have considered himself lucky because the law does not permit whipping to be imposed on him as he is above the age of 50 years. As far as this court is concerned an order of whipping would have been more than appropriate and ought to have been ordered to be imposed against the respondent if not only for the law which prevents such imposition.

b

Decision On Appeal

In the circumstances, and having considered the printed notes of the record of appeal, the totality of the admissible facts presented before the court and the submissions both by the learned deputy public prosecutor and the respondent's counsel and taking, into account the general principles of sentencing and the case law, this court is of the view that the sentence passed by the learned Sessions Court judge is manifestly inappropriate, inadequate and too lenient and that this is an appropriate case which calls for intervention by this appellate court. The appeal by the public prosecutor against the inadequacy of sentence is allowed. The sentence of imprisonment is enhanced to two year's imprisonment against the respondent and the fine of RM5,000 is ordered to be sustained. The respondent is to serve his sentence from today 28 August 2000.

e

Stay Of Execution

Immediately after the decision of this court was delivered, the respondent's counsel applied to this court for stay of execution of the sentence and that he has been instructed by the respondent to apply for the same. As granting of stay of execution is not automatic and since there is no notice of appeal being filed in court against the decision of this court and no grounds was advanced for granting the stay, this court rejected the application for stay and indicated that this court will reconsider such an application if notice of appeal and a formal application is filed in court.

g

h

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